

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
Canada Postal Corporation–United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2012-5

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF AN AMENDMENT
TO BILATERAL AGREEMENT WITH CANADA POST
CONCERNING ANTICIPATED PRODUCT LAUNCH DATE

(December 17, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1568.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of an amendment to an existing bilateral agreement with Canada Post Corporation (Canada Post).² The Notice informs the Commission of a Canada Post notification announcing the anticipated launch date of January 14, 2013, for a certain inbound product, as described in the amendment. Notice at 1.

In Order No. 1078, the Commission approved the addition of the Canada Post Corporation – United States Postal Service Contractual Bilateral Agreement (Canada Post 2012 Agreement) to the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product.³ The Canada Post Agreement establishes

¹ PRC Order No. 1568, Notice and Order on Limited Reopening of Docket to Address Postal Service Notice Concerning Anticipated Product Launch Date, December 6, 2012.

² Notice of United States Postal Service of Amendment to Agreement, November 29, 2012 (Notice).

³ PRC Order No. 1078, Order Concerning Rate Adjustment For Bilateral Agreement With Canada Post Negotiated Service Agreement, Docket No. R2012-5, December 27, 2011.

negotiated rates for inbound letterpost.⁴ Attachment 7 to the agreement committed both parties to certain marketing and product development initiatives. Notice at 2. The amendment, identified as Attachment 8 to the agreement, is the result of one of those initiatives. *Id.* According to the Postal Service's Notice, the inbound product that is the outgrowth of this initiative is "similar to an offering that is found in the bilateral agreements with other foreign postal operators."⁵ The Postal Service subsequently informed the Commission that the amendment establishes negotiated rates for inbound letterpost ePackets tendered as Exprés items and branded with a common logo.⁶

The Postal Service asks that the Commission "take note of the amendment . . . and the financial models indicating that the agreement continues to comport with the requirements of 39 U.S.C. §3622(c)(10)." *Id.* at 3.

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the amendment to the Canada Post 2012 Agreement and the supporting financial model filed under seal that accompanied the Notice. Based upon that review, the Public Representative concludes that amendment will likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service.

Section 3622(c)(10) sets forth three criteria to guide Commission review of a market dominant negotiated service agreement: whether such an agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3)

⁴ See Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2012-5, November 23, 2011.

⁵ *Id.*; see also PRC Order No. 871, Order concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, PRC Docket No. R2011-7, September 23, 2011 (China Post 2011 Agreement); and PRC Order No. 1058, Order Approving Request to Include Hongkong Post Group Bilateral Agreement within an Existing Market Dominant Product, Docket No. R2012-4, December 20, 2011 (Hongkong Post 2012 Agreement).

⁶ Notice of United States Postal Service of Substitution of Attachment, December 17, 2012; see also Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2011-6, August 12, 2011, Attachment 2. The Public Representative wishes to thank the Postal Service for its cooperation in filing the December 17th Notice, and thereby providing greater transparency for public review of the amendment.

will be available on public and reasonable terms to similarly situated mailers. 39 U.S.C. § 3622(c)(10).

In this proceeding, the Postal Service submits an update of the financial model included with its initial notice in Docket No. R2012-5.⁷ The updated financial model covers the final year (January 1, 2013 - January 31, 2013) of the two year period of the Canada Post 2012 Agreement, and presents new cost estimates for each product stream, including ePackets, based upon the FY 2011 International Cost and Revenue Analysis (ICRA) report, as well as updated estimates of inflation and exchange rates for this one-year period.

With respect to criterion (1), a review of the updated financial model indicates that the negotiated rates for inbound letterpost items, including ePackets, in the amended Canada Post 2012 Agreement should improve the financial position of the Postal Service relative to the Universal Postal Union (UPU) terminal dues rates. With respect to criteria (2) and (3), the Postal Service's arguments that these criteria are not implicated by the Canada Post 2012 Agreement remain valid.⁸ Consequently, the Canada Post 2012 Agreement, as amended, continues to comport with the requirements of 39 U.S.C. §3622(c)(10).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁷ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, Docket No. R2012-5, November 23, 2011 (Initial Notice), at 1.

⁸ Initial Notice, at 4-6.